

LOW, STEIN, SANDLER, BROCHIN, KOHL &amp; FISHER

744 BROAD STREET

NEWARK, N. J. 07102

IG file  
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201 624-4600

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 MURRAY J. LAULIGHT  
 ARCHIBALD S. ALEXANDER, JR.  
 MARTIN R. GOODMAN  
 JOHN D. SCHUPPER  
 STEPHEN N. DERMER

November 29, 1976

OGC Has Reviewed

WILLIAM T. KNOX IV  
 MICHAEL L. ROOBURG  
 ALLEN B. LEVITHAN  
 R. BARRY STIGER  
 GREGORY B. REILLY  
 DAVID W. MILLS  
 MELVIN GREENBERG  
 PETER H. EHRENBERG  
 BARBARA BYRD WECKER  
 ALLAN G. TRAPUNSKY  
 LEWIS J. PAPER  
 STANLEY A. EPSTEIN  
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C

Lawrence T. Bennett, Esq.  
 Assistant United States Attorney  
 U.S. Courthouse - 3411  
 Washington, D.C. 20001

O

Re: Sam and Juene Jaffe v.  
 Central Intelligence Agency  
 and Department of Justice  
Civil Action No. 76-1394

P

Dear Mr. Bennett:

Enclosed please find a Notice to Take the Depositions of the persons you submitted Affidavits of in the above-referenced matter.

Sincerely,

Lewis J. Paper

Y

LJP/cjj  
 Enc.

cc: Hon. George Bush  
 Hon. Edward Levi

IG file #49

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SAM and JUENE JAFFE,	:	
Plaintiffs,	:	Civil Action No. 76-1394
-v-	:	<u>REPLY TO GOVERNMENT'S</u>
CENTRAL INTELLIGENCE AGENCY	:	<u>RESPONSE IN OPPOSITION</u>
and DEPARTMENT OF JUSTICE,	:	<u>TO PLAINTIFFS' VAUGHN</u>
Defendants	:	<u>MOTION</u>

On or about November 9, 1976, the defendants filed numerous affidavits and supplementary documents in support of defendants' opposition to plaintiffs' motion for a detailed itemization, indexing, and justification as required by Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

Despite the voluminous quantity of documents filed by defendants, they have still failed to satisfy their requirements under Vaughn. Missing from all the documents filed by defendants is the detailed description required. Likewise, the justifications offered by the Government for invoking various exemptions are, in many cases, superficial. For instance, the FBI's discussion of search slips in Mr. Schweickhardt's affidavit is very ambiguous and leaves open the question of whether search slips might contain more substantive information than "file numbers". (See Schweickhardt affidavit at 6.) This may be critical since search slips apparently can be more than one page and, accordingly, would seem to include much more than identification numbers. (E.g. documents 20, 24, Schweickhardt affidavit at 22.) To some extent, these

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problems can be disposed of by additional discovery.\* But certainly this matter can be expedited, and plaintiffs' rights of due process protected, only if plaintiffs' Vaughn motion is granted.

In a very recent case, the Court of Appeals in this Circuit has indicated clearly that the Vaughn procedures should apply to investigative agencies like the CIA and FBI. In Phillippi v. CIA, No. 76-1004 (D.C. Cir. November 16, 1976), the Court was confronted with a question as to whether the CIA had to disclose the existence of requested records. The District Court had ruled that the agency did not have to admit the existence or non-existence of the records. The Court of Appeals reversed, remanding the case to the District Court to allow further discovery and then issue more detailed findings as to whether the agency's position should be sustained. In the course of its opinion, the Court of Appeals made it clear that, if the existence of the records were disclosed, ". . . the standard Vaughn procedures. . . would then apply." (Slip op. at 8, n. 7.)

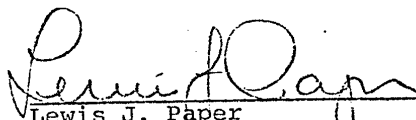
Plaintiffs' right of access to the requested records here cannot be expanded by a showing of need. However, where there is a critical need for the records, the Court should exercise its discretion to provide the requesting party with as much information as possible in the pre-trial stages. Likewise, a showing of need can justify the exercise of the Court's discretion to expedite the matter as much as possible, even if that means giving the particular case priority over cases filed earlier.

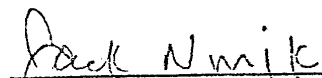
\* Defendants have been served this day with notices to take the depositions of the individuals who submitted affidavits in support of defendants' opposition to plaintiffs' Vaughn motion.


(Open America v. Watergate Special Prosecution Force, No. 76-1371 (D.C. Cir. July 7, 1976).) In the instant case, plaintiffs have requested records from the CIA and FBI because plaintiff Sam Jaffe's reputation as a journalist has been unfairly tarnished by allegations from secret sources that he has been an agent for American and/or foreign intelligence services. Plaintiffs believe that these allegations are the primary, if not sole, factor in explaining why plaintiff Sam Jaffe has been unable to get a job in the journalism field within the last six years. (See attached affidavit of Sam Jaffe.) Given this critical need for the requested records, the Court should exercise its discretion to require the Government to provide, on an expedited basis, the information required under Vaughn v. Rosen, supra.

WHEREFORE, in view of the foregoing and the arguments previously set forth by plaintiffs, it is respectfully requested that plaintiffs' Vaughn motion be granted.

Respectfully submitted,

  
 Lewis J. Paper  
 744 Broad Street  
 Newark, New Jersey 07102  
 (201) 624-4600

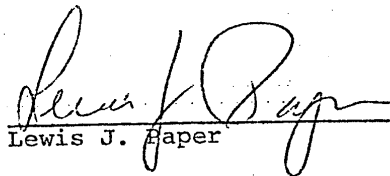
  
 Jack Novik *by* *vo*  
 American Civil Liberties Union  
 22 East 40th Street  
 New York, New York 10016

  
 Jerry J. Berman *by* *af*  
 122 Maryland Avenue, N.E.  
 Washington, D.C. 20002  
 Attorneys for Plaintiffs

November 29, 1976

CERTIFICATION

I, LEWIS J. PAPER, hereby certify that I have this 30th day of November, 1976, caused a copy of plaintiffs' Reply to the Government's Response in Opposition to Plaintiffs' Vaughn Motion to be hand-delivered to Lawrence T. Bennett, Esq. Counsel for Defendants, at United States Courthouse, Washington, D.C., and mailed, via first class mail, copies of the same to the Hon. Edward Levi, at the Department of Justice, Washington, D.C. and the Hon. George Bush, at the Central Intelligence Agency, Washington, D.C.

  
Lewis J. Paper

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SAM AND JUENE JAFFE, :

Plaintiffs, :

-v- :

Civil Action No. 76-1394

CENTRAL INTELLIGENCE AGENCY :  
and DEPARTMENT OF JUSTICE, :

Affidavit

Defendants.

STATE OF MARYLAND :

ss.:

COUNTY OF MONTGOMERY:

SAM JAFFE, being of full age and having been duly sworn according to law upon his oath, deposes and says:

1. I am one of the plaintiffs in the above-referenced matter.
2. I am a journalist by profession. In 1951, I worked for the United Nations, performing certain reporting assignments. After leaving the United Nations, I was employed by Life Magazine as a reporter, a position I held until October 1954. From then until 1956, I was a free lance writer. Between 1956 and 1961, I worked for the Columbia Broadcasting System as a reporter and assignment editor covering national and international stories. In late 1961, I left CBS to accept an assignment as the chief of the Moscow bureau for the American Broadcasting Company. I remained chief of that ABC Moscow bureau until 1965, whereupon I left to become chief of ABC's Far East bureau in Hong Kong. In 1968, I returned to the United States and continued to work for ABC until 1969. I then left ABC to accept a position as managing editor of Metromedia Radio News in Washington, D.C., a position I held until

1970. After leaving Metromedia, I made innumerable attempts to secure full-time employment in various parts of the country in either the broadcast media or the print media. Although my journalistic work had received praise from various quarters, both within and without the journalism profession, I was unable to secure a position in the broadcast media or print media. Generally, I was told that no positions were available. In the meantime, while looking for a permanent job, I undertook various free lance writing assignments for United Press International, the Chicago Daily News, and the Chicago Tribune (but none of these organizations would offer me a permanent job). I also gave lectures around the country arranged through the American Program Bureau in Boston, Massachusetts.

3. I have never ceased my efforts to secure full-time employment in the broadcast media or the print media. However, at every juncture, I have only been unsuccessful.

4. In March 1969, I spent three days with agents of the Federal Bureau of Investigation in Washington, D.C. being debriefed about my work overseas. In the course of that debriefing, I was told by one of the FBI agents that Yuri Nosenko, a Soviet government official who defected to the United States in 1964, had identified me as an agent of the KGB, the Soviet secret police. At the time I was told this, I did not attribute any significance to it vis-a-vis my employment, since I felt my credentials as a journalist were (and are) unassailable. However, after receipt of some documents from the FBI within the last year, I have learned that the FBI did not believe me in those March 1969 debriefings and identified me as some kind of security risk.

5. Concerned about my inability to get a job as a journalist, and believing that that inability was somehow tied to al-

legations concerning my involvement as a KGB agent, I requested in early 1975 that the FBI and the Central Intelligence Agency provide me with access to records concerning me, such access to be given pursuant to the Freedom of Information Act. I also made a request of both the CIA and the FBI to provide me with letters as to whether they had any evidence that I had ever been an agent of any foreign intelligence service. In a letter dated November 24, 1975, William Colby, then director of the CIA, stated that the CIA has no evidence that I have ever been an agent of the Soviet or other foreign intelligence service. The FBI has refused to provide me with a similar letter.

6. On or about November 24, 1975, my wife and I met with two FBI agents in Washington, D.C. to discuss my desire for a letter from the FBI clearing me of these allegations by Mr. Nosenko and my request for access to FBI records concerning me, such access to be accorded under the Freedom of Information Act. One of the agents told me that, if a security check were ever made of my background by a prospective employer or for any other purpose, Mr. Nosenko's allegations would have to be made known.

7. In early 1976, stories were circulated in both the broadcast and print media that I had been accused of being a KGB agent and that I also may have been an agent for the CIA and/or FBI. Based upon these reports, Walter Cronkite subsequently gave an editorial over the CBS Evening News and the CBS national radio network condemning my involvement as an informant for government agencies. Although during my career I have on many occasions responded to requests by the FBI and CIA for information concerning my contact with foreign persons, I did so as an American citizen who wanted to help his country and not as an employee or agent of either the CIA or FBI.

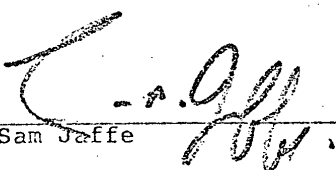


8. In any event, the wide publicity given my plight caused me to be further concerned about the allegations which Yuri Nosenko had purportedly made against me. In late 1975 and early 1976 I had numerous conversations with representatives of the FBI concerning my desire to find out exactly what Mr. Nosenko had said about me. I was finally told by the FBI that Mr. Nosenko was under the jurisdiction of the CIA. I subsequently had numerous conversations with representatives of the CIA. In April 1976, Dr. Chamberlin, then Inspector General of the CIA, suggested that I submit questions which in turn could be submitted to Mr. Nosenko for his answering. On or about April 26, 1976, I sent a letter to George Bush, Director of the CIA, enclosing questions which I asked to have answered by Mr. Nosenko in writing and submitted to me. In the late spring and early summer of 1976, I had several conversations with a representative of the Inspector General's office of the CIA; in those conversations, I was told that Mr. Nosenko's answers had been received by the CIA and that I should be receiving them soon.

9. On or about August 17, 1976, I received a letter from B. C. Evans, Executive Secretary of the CIA, concerning my request for Mr. Nosenko's answers. This letter is attached. In it, Mr. Evans informed me that Mr. Nosenko's answers could not be given to me because I had filed a lawsuit against the CIA to obtain records withheld from me under the Freedom of Information Act.

10. None of the materials supplied to me by the FBI or CIA under my Freedom of Information Act request disclose (a) the FBI's reasons for identifying me as a security risk as early as 1965 or (b) anything concerning the substance of Mr. Nosenko's allegations or the answers that he supplied in response to the questions I submitted to Director Bush at the end of April 1976. Without these records, I cannot establish that I am innocent of the charges made in secret against me by Mr. Nosenko, that the FBI

was mistaken in identifying me as a security risk, and that I am not and have not been an agent of any intelligence service, foreign or American. Without establishing these facts, I believe I will continue to be unable to find a job in journalism. Although no one has explained this to me explicitly, I firmly believe, after 20 years in the business and after witnessing Mr. Cronkite's emotional (and unfounded) attack on me over national/television, that broadcast and print media executives would be afraid to hire me because (a) they believe my credibility -- the journalist's most important tool -- is tainted, and (b) they believe I have betrayed professional standards by acting as an agent for foreign and/or American intelligence agencies.

  
Sam Jaffe

Subscribed and Sworn to  
before me this 22 day  
of November, 1976.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SAM and JUENE JAFFE, :  
Plaintiffs, : Civil Action No. 76-1394  
-v- : NOTICE TO TAKE ORAL  
CENTRAL INTELLIGENCE AGENCY : DEPOSITION  
and DEPARTMENT OF JUSTICE, :  
Defendants. :

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TO: LAWRENCE T. BENNETT, ESQ.  
Assistant United States Attorney  
Counsel for Defendants  
U.S. Courthouse - 3411  
Washington, D.C. 20001

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, testimony will be taken by deposition upon oral examination before a person authorized by the laws of the District of Columbia to administer oaths on December 8, 1976, at 10 a.m., at the offices of the American Civil Liberties Union, 410 First Street, S.E., Washington, D.C., with respect to all matters relevant to the subject matter involved in the above-referenced action, at which time and place you will produce the following persons whose testimony is to be taken:

CHARLES A. BRIGGS;  
GENE F. WILSON;  
ROBERT W. GAMBINO;  
ANDREW T. FALKIEWICZ; and

G. R. SCHWEICKHARDT.

*Lewis J. Paper*

Lewis J. Paper  
744 Broad Street  
Newark, New Jersey 07102  
(201) 624-4600

*Jack Novik*

Jack Novik *by CP*  
American Civil Liberties Union  
22 East 40th Street  
New York, New York 10016

*Jerry J. Berman*

Jerry J. Berman  
122 Maryland Avenue, N.E.  
Washington, D.C. 20002  
Attorneys for Plaintiffs

November 29, 1976

UNCLASSIFIED	CONFIDENTIAL	SECRET
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# EXECUTIVE SECRETARIAT

## Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	S/MC				
4	DDS&T				
5	DDI				
6	DDA				
7	DDO				
8	D/DCI/IC				
9	D/DCI/NIO				
10	GC	✓			
11	LC				
12	IG				
13	Compt				
14	D/Pers				
15	D/S				
16	DTR				
17	Asst/DCI				
18	AO/DCI				
19	C/IPS				
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SUSPENSE		Date			

Remarks:

3637 (1-75)

Date